

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

WALLACE A. GARDNER,
ADC #110784

PLAINTIFF

V.

5:13CV00353 BSM/JTR

SONYA DAVIS-PEPPERS,
Doctore, Maximum Security Unit, ADC, et al.

DEFENDANTS

ORDER

Defendants Kelley and McDowell has filed separate Motions for Summary Judgment on the issue of exhaustion, Briefs in Support, and a Statements of Undisputed Facts. *Docs. 20 through 25*. Plaintiff must respond to both Motions.

At the summary judgment stage, a plaintiff cannot rest upon mere allegations and, instead, must meet proof with proof. *See* Fed. R. Civ. P. 56(e). This means that Plaintiff's Responses must include his legal arguments, as well as affidavits,¹ prison records, or other evidence establishing that there is a genuine issue of material fact that must be resolved at a hearing or trial.

Furthermore, pursuant to Local Rule 56.1, Plaintiff must *also separately* file Statements of Disputed Facts, which lists: (a) any disagreement he has with the

¹ The affidavit must be based upon the personal knowledge of the person executing the affidavit *and must be either*: (1) sworn and subscribed to by a notary public; or (2) executed under penalty of perjury, as provided for by 28 U.S.C. § 1746.

specifically numbered factual assertions in each of the Defendant's Statements of Undisputed Facts (*Docs. 21 & 24*); and (b) any other disputed facts that he believes must be resolved at a hearing or trial.²

Finally, Plaintiff is advised that if he intends to rely on documents that have been previously filed in the record, he must specifically refer to those documents by docket number, page, date, and heading. The Court will not sift through the file to find support for Plaintiff's factual contentions. *See Crossley v. Georgia-Pacific, Corp.*, 355 F.3d 1112, 1113-14 (8th Cir. 2004) (affirming the grant of summary judgment because a plaintiff failed to properly refer to specific pages of the record that supported his position).

IT IS THEREFORE ORDERED THAT:

1. Plaintiff must file, **within thirty days of the entry of this Order**, Responses to Defendant Kelley's and McDowell's Motions for Summary Judgment and a separate Statements of Disputed Facts that comply with the Fed. R. Civ. P. 56, Local Rule 56.1, and the instructions in this Order.

2. Plaintiff is advised that the failure to timely and properly comply with this Order will result in: (a) all of the facts in Defendants' summary judgment papers

² If Plaintiff disputes any of the facts in Defendants' Statements of Undisputed Facts, he *must identify* each numbered paragraph that contains the facts he disputes *and*, for each paragraph, explain *why* he disputes those facts.

being deemed admitted by Plaintiff, pursuant to Local Rule 56.1(c); or (b) the dismissal of this action, without prejudice, pursuant to Local Rule 5.5(c)(2).

Dated this 14th day of April, 2014.


UNITED STATES MAGISTRATE JUDGE